

MINUTES

NEVADA STATE BOARD OF OPTOMETRY
REGULAR MEETING

JANUARY 16TH, 2004
UNIVERSITY OF NEVADA, LAS VEGAS
MEETING ROOM A, THOMAS & MACK CENTER
4505 MARYLAND PARKWAY
LAS VEGAS, NEVADA 89154

DR. ALLEMAN ASKED FOR PUBLIC COMMENT. THERE WAS NO PUBLIC COMMENT.

A REGULAR MEETING OF THE NEVADA BOARD OF OPTOMETRY WAS CALLED TO ORDER BY BOARD PRESIDENT, KURT G. ALLEMAN, O.D., AT 10:00 O'CLOCK A.M. ON JANUARY 16TH, 2004, IN MEETING ROOM A, THOMAS & MACK CENTER, UNIVERSITY OF NEVADA, LAS VEGAS, 4505 MARYLAND PARKWAY, LAS VEGAS, NEVADA.

IDENTIFYING THEMSELVES AS PRESENT WERE:

KURT G. ALLEMAN, O.D., BOARD PRESIDENT
BRAD C. STEWART, O.D., BOARD MEMBER
JACK SUTTON, O.D., BOARD MEMBER
GEORGE BEAN, BOARD MEMBER
JUDI KENNEDY, EXECUTIVE DIRECTOR
TINA LEISS, SENIOR DEPUTY ATTORNEY GENERAL

ALSO PRESENT WERE:

JEFFREY D. FERRIS, O.D.
LESA DAVIS, O.D.
SHANDA BADGER
ALYSSA HARVEY, EXECUTIVE DIRECTOR,
NEVADA OPTOMETRIC ASSOCIATION
JEANETTE BELZ, NEVADA OPHTHALOMOLOGICAL SOCIETY

THE MINUTES OF THE BOARD'S OCTOBER 17TH, 2003, MEETING WERE PRESENTED FOR APPROVAL. DR. SUTTON MOVED THE MINUTES BE APPROVED AS DRAFTED. MR. BEAN SECONDED THE MOTION. THE VOTE WAS UNANIMOUS.

THE MINUTES OF THE BOARD'S NOVEMBER 18TH, 2003, MEETING WERE PRESENTED FOR APPROVAL. DR. SUTTON INDICATED ON PAGE 3, IN THE FOURTH PARAGRAPH, THE WORD "IN" NEEDED TO BE INSERTED PRIOR TO THE WORDS "THE PRESENCE OF A NOTARY PUBLIC." MR. BEAN MOVED THE MINUTES BE APPROVED AS CORRECTED. DR. STEWART SECONDED THE MOTION. THE VOTE WAS UNANIMOUS.

MOVING TO AGENDA ITEM 4, DR. ALLEMAN NOTED THE PRESENCE OF DR. FERRIS. MS. LEISS, FOR CLARIFICATION, STATED SHE AND MS. KENNEDY HAD MET WITH DR. FERRIS AND HIS ATTORNEY, J. THOMAS SUSICH, ESQ., REGARDING THE PENDING ACCUSATION. MS. LEISS NOTED DR. FERRIS HAD TERMINATED THE AGREEMENT IN QUESTION. MS. LEISS STATED DR. FERRIS' ATTORNEY HAD BEEN ADVISED THE DISCIPLINE TO BE IMPOSED IN CONNECTION WITH THE ACCUSATION WOULD BE DETERMINED BY THE BOARD. DR. STEWART POINTED OUT THERE WAS A JULY 19TH, 2002, ORDER WHICH OUTLINED DISCIPLINE WHICH WOULD BE IMPOSED IN CASE OF AN ACCUSATION BEING FILED DURING THE PROBATIONARY PERIOD ESTABLISHED IN THE ORDER. DR. ALLEMAN STATED DR. FERRIS HAD VIOLATED NEVADA STATE LAW, THAT

THERE WAS A NEED FOR DISCIPLINE, AND THAT HE DID NOT BELIEVE THE BOARD SHOULD CONSIDER THE MATTER CONCLUDED BASED ON THE TERMINATION OF THE AGREEMENT. MS. LEISS ASKED DR. FERRIS IF HE WAS STILL REPRESENTED BY COUNSEL. DR. FERRIS RESPONDED MR. SUSICH WAS STILL HIS ATTORNEY, BUT THAT HE WAS NOT PRESENT. MS. LEISS ASKED DR. FERRIS IF HE WANTED TO ADDRESS THE BOARD WITHOUT HIS COUNSEL BEING PRESENT. DR. FERRIS REPLIED IN THE AFFIRMATIVE. THE BOARD DISCUSSED THE VERBIAGE OF THE JULY 19TH, 2002, ORDER, AND THE DISCRETION OF THE BOARD IN IMPOSING FURTHER DISCIPLINE. DR. STEWART STATED HE FELT THE PROBATIONARY PERIOD SHOULD BE EXTENDED BASED ON DR. FERRIS' VIOLATION OF THE STATUTES SUBSEQUENT TO THE ENTRY OF THE BOARD'S JULY 19TH, 2002, ORDER. DR. FERRIS ADVISED THE BOARD HE CURRENTLY HAS ONLY ONE PRACTICE LOCATION. DR. SUTTON CONCURRED THE PROBATIONARY PERIOD SHOULD BE EXTENDED. DR. STEWART MOVED THE PROBATIONARY PERIOD BE EXTENDED FOR A PERIOD OF FIVE YEARS FROM THE DATE OF THE MEETING UNDER THE SAME CONDITIONS OUTLINED IN THE JULY 19TH, 2002, ORDER, THAT DR. FERRIS' LICENSE BE SUSPENDED FOR A PERIOD OF TWO [2] BUSINESS DAYS, AND THAT AN ADMINISTRATIVE FINE IN THE AMOUNT OF \$2,000 BE IMPOSED. DR. SUTTON SECONDED THE MOTION. THE VOTE WAS UNANIMOUS. MS. LEISS ADVISED DR. FERRIS THE PROPOSAL WAS MADE

FOR THE PURPOSE OF DISPOSING OF THE ACCUSATION, AND THAT IF, AFTER SPEAKING WITH HIS ATTORNEY, DR. FERRIS DECLINED TO ACCEPT THE PROPOSAL, THE MATTER WOULD BE SET FOR A HEARING. DR. FERRIS INDICATED HE WOULD MOST PROBABLY ACCEPT THE PROPOSAL, BUT THAT HE DID WANT TO DISCUSS IT WITH HIS COUNSEL

THE BOARD TURNED TO AGENDA ITEM 5, THE COMPLAINT OF GENE GRIFFITH VS. LESA DAVIS, O.D. DR. ALLEMAN OUTLINED THE ALLEGATIONS OF THE COMPLAINT, AND NOTING THE PRESENCE OF DR. DAVIS, ASKED IF SHE WISHED TO ADDRESS THE BOARD. DR. DAVIS ADVISED THE BOARD SHE HAD PERFORMED A PRE-OPERATIVE EXAMINATION ON MR. GRIFFITH, AND HAD RENDERED POST OPERATIVE CARE. THERE ENSUED A DISCUSSION BETWEEN THE MEMBERS AND DR. DAVIS CONCERNING HER TREATMENT OF MR. GRIFFITH. DR. DAVIS STATED SHE HAD SEEN MANY PATIENTS, THAT SOME PATIENTS WERE UNHAPPY WITH THE RESULTS OF THEIR SURGERY, THAT SHE FELT MR. GRIFFITH HAD BEEN WELL INFORMED OF POSSIBLE RESULTS, POSSIBLE CONSEQUENCES, ETC., AND THAT SHE BELIEVED HIS EXPECTATIONS MAY HAVE BEEN UNREASONABLY HIGH. MR. BEAN POINTED OUT IT WAS MR. GRIFFITH, WHO AFTER HAVING BEEN INFORMED, INSISTED ON HAVING THE SURGERY. DR. DAVIS STATED IT WAS NOT SHE WHO MADE THE FINAL DECISION REGARDING WHETHER OR NOT MR. GRIFFITH WAS A GOOD CANDIDATE FOR THE SURGERY,

BUT THAT THAT DECISION WAS MADE BY THE OPHTHALMOLOGIST. DR. SUTTON STATED HE BELIEVED THE ALLEGATIONS OF THE COMPLAINT HAD BEEN ADDRESSED, AND THAT HE AGREED MR. GRIFFITH'S EXPECTATIONS MAY HAVE BEEN TOO HIGH. DR. SUTTON MOVED THE COMPLAINT BE DISMISSED FOR LACK OF MERIT. DR. STEWART SECONDED THE MOTION. THE VOTE WAS UNANIMOUS. MR. BEAN ASKED DR. DAVIS IF IT WERE POSSIBLE TO INFORM MR. GRIFFITH OF THE

OTHER PROCEDURE THAT HAD BEEN DISCUSSED. DR. DAVIS STATED SHE HAD TOLD HIM ABOUT THE PROCEDURE.

DR. ALLEMAN ASKED DR. DAVIS IF SHE COULD, AS REQUIRED BY THE BOARD'S SUBPOENA, PRODUCE A COPY OF THE CO-MANAGEMENT AGREEMENT SHE HAD WITH THE OPHTHALMOLOGIST FOR MR. GRIFFITH'S PRE AND POST OPERATIVE TREATMENT. DR. DAVIS STATED SHE DID NOT HAVE SUCH AN AGREEMENT FOR MR. GRIFFITH. DR. DAVIS DIRECTED THE BOARD'S ATTENTION TO PAGE 5, PARAGRAPH VIII OF THE PATIENT CONSENT FORM WHICH HAD BEEN SIGNED BY MR. GRIFFITH. DR. DAVIS WENT ON TO STATE THAT EVEN THOUGH THE PATIENT CONSENT FORM SOMEWHAT EXPLAINS THE PRE AND POST OPERATIVE TERMS TO THE PATIENT, SHE BECAME CONCERNED, IN APPROXIMATELY NOVEMBER, 2002, THAT IT DID NOT COMPLY

COMPLETELY WITH THE LAW. BASED ON HER CONCERNS, DR. DAVIS STATED SHE CONTACTED DR. MARSICH, WHO IS A CONSULTANT FOR EYEGLOSS WORLD, WHICH IS THE CORPORATE ENTITY THAT OWNS LASIK VISION INSTITUTE. DR. DAVIS CONTINUED, STATING DR. MARSICH HAD TOLD HER THE FORM WAS SUFFICIENT, AND THAT SHE TOOK NO FURTHER ACTION. DR. DAVIS TENDERED COPIES OF CO-MANAGEMENT AGREEMENTS SIGNED BY OTHER PATIENTS. THE BOARD DECLINED TO ACCEPT THE COPIES, CITING PRIVACY CONCERNS.

JEANETTE BELZ, REPRESENTING THE NEVADA OPHTHALMOLOGICAL SOCIETY, ASKED IF IT WOULD BE POSSIBLE FOR THE BOARD OF OPTOMETRY TO INVESTIGATE WHETHER OR NOT THE LASER SURGICAL CENTERS ARE PROPERLY LICENSED. DR. STEWART ASKED IF SHE WERE REQUESTING THE BOARD OF OPTOMETRY INVESTIGATE OPHTHALMOLOGISTS. MS. BELZ, REPLIED, NO, SHE WANTED THE BOARD TO INVESTIGATE THE ORGANIZATIONS. DR. STEWART INQUIRED OF MS. LEISS IF THIS WERE SOMETHING THE BOARD OF OPTOMETRY SHOULD BE INVESTIGATING. MS. LEISS REPLIED IT WAS NOT, THAT THE BOARD OF OPTOMETRY HAS NO JURISDICTION, AND THAT IT CAN LOOK ONLY TO THE BEHAVIOR OF OPTOMETRISTS. MS. LEISS CONTINUED BY ADVISING MS. BELZ THERE IS NO PROVISION IN CHAPTER 636 OF THE NEVADA REVISED STATUTES THAT WOULD PROVIDE THE BOARD OF OPTOMETRY ANY JURISDICTION TO LOOK INTO THE MATTER. MS.

KENNEDY INTERJECTED THE BOARD WAS CONCERNED WITH DR. DAVIS' COMPLIANCE WITH THE STATUTE REQUIRING CO-MANAGEMENT AGREEMENTS IN SURGICAL SITUATIONS, AND THAT THE CRITERIA FOR THE AGREEMENTS WAS SPECIFICALLY SET FORTH IN THE STATUTE. MS. BELZ STATED SHE WAS NOT ASKING FOR AN INVESTIGATION, BUT ONLY FOR COOPERATION BETWEEN BOARDS. MS. LEISS REITERATED THE BOARD HAD NO JURISDICTION IN THE MATTER. DR. ALLEMAN THANKED MS. BELZ FOR HER COMMENTS.

THE BOARD TURNED TO AGENDA ITEM 6, THE COMPLAINT OF WADE CHRISTIAN VS. DANIEL T. ROWAN, O.D. THE BOARD DISCUSSED THE ALLEGATIONS OF THE COMPLAINT, AND THE RESPONSE OF DR. ROWAN. AT THE CONCLUSION OF THE DISCUSSION, DR. STEWART MOVED THE COMPLAINT BE DISMISSED FOR LACK OF MERIT. MR. BEAN SECONDED THE MOTION. THE VOTE WAS UNANIMOUS.

THE BOARD NEXT CONSIDERED AGENDA ITEM 7, THE COMPLAINT OF LEANNE KELLEY VS. ADAM SCHWARTZ, O.D. DR. ALLEMAN NOTED MS. KELLEY SEEMED TO BE UPSET BECAUSE HER MOTHER WAS SEEN BY DR. SCHWARTZ, AND NOT AN OPHTHALMOLOGIST. AFTER DISCUSSION, DR. STEWART MOVED THE COMPLAINT BE DISMISSED BASED ON LACK OF JURISDICTION. DR. SUTTON SECONDED THE MOTION. THE VOTE WAS UNANIMOUS.

THE MEETING RECESSED AT 10:35 A.M. THE MEETING

RECONVENED AT 10:45 A.M.

THE BOARD DECLINED TO COMMENT AND/OR ISSUE A RESPONSE TO AGENDA ITEM 8, THE CORRESPONDENCE FROM DR. HARVEY OHRINER.

DR. ALLEMAN ASKED FOR PUBLIC COMMENT. THERE WAS NO PUBLIC COMMENT.

THE BOARD SCHEDULED A REGULAR MEETING FOR MAY 21ST, 2004, IN LAS VEGAS, NEVADA.

MR. BEAN MOVED THE MEETING ADJOURN. DR. SUTTON SECONDED THE MOTION. THE VOTE WAS UNANIMOUS. THE MEETING ADJOURNED AT 11:50 A.M.